

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY CESAR HERNANDEZ,

Plaintiff,

v.

T. POTTS, et al.,

Defendants.

No. 2:20-cv-1912 CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's jail trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
 2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
 4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
 5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
 9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
 11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than
 14 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
 15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
 16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
 17 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
 18 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
 19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
 20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
 21 at 678. When considering whether a complaint states a claim upon which relief can be granted,
 22 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
 23 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
 24 U.S. 232, 236 (1974).

25 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
 26 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
 27 court will, however, grant leave to file an amended complaint.

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1 The primary problem with plaintiff's complaint is that it is not entirely legible and is
2 difficult to understand. If plaintiff choses to file an amended complaint, it must be legibly and
3 coherently written. Plaintiff should omit details not essential to his claims.

4 Also, in an amended complaint, plaintiff must demonstrate how the conditions complained
5 of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d
6 227 (9th Cir. 1980). Plaintiff must allege in specific terms how each named defendant is involved
7 and then how such conduct amounts to the denial of a federal right. There can be no liability
8 under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's
9 actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague
10 and conclusory allegations of official participation in civil rights violations are not sufficient.
11 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

12 Plaintiff asserts violations of California law. Plaintiff is informed that before he may
13 proceed on a claim arising under California law in this court he must comply with the terms of the
14 California Tort Claims Act, and then plead compliance. See Cal. Gov't Code § 910 et seq.;
15 Mangold v. Cal. Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995). Complaints must
16 present facts demonstrating compliance, rather than simply conclusions suggesting as much.
17 Shirk v. Vista Unified School Dist., 42 Cal.4th 201, 209 (2007).

18 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
19 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
20 complaint be complete in itself without reference to any prior pleading. This is because, as a
21 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
22 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
23 longer serves any function in the case. Therefore, in an amended complaint, as in an original
24 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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1 In accordance with the above, IT IS HEREBY ORDERED that:

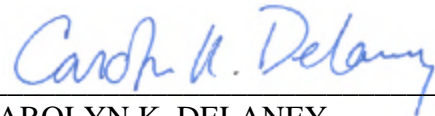
2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
4 shall be collected and paid in accordance with this court's order to the Director of the California
5 Department of Corrections and Rehabilitation filed concurrently herewith.

6 3. Plaintiff's complaint is dismissed.

7 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
9 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
10 number assigned this case and must be labeled "Amended Complaint." Failure to file an
11 amended complaint in accordance with this order will result in a recommendation that this action
12 be dismissed.

13 Dated: October 13, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE